

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

**3:10cv657**

**JAMES DEAN EAKER,**

**Plaintiff,**

**v.**

**MARY BURNS,**

**Defendant.**

**ORDER**

**THIS MATTER** comes before the Court on initial review of Plaintiff's pro se Complaint pursuant to 42 U.S.C. § 1983 (Doc. No. 1).

Plaintiff filed the instant Complaint against Defendant Mary Burns, alleging that Defendant Burns unlawfully seized and lost or destroyed his property in violation of the Due Process Clause.

The Prisoner Litigation Reform Act ("PLRA") makes clear that "[i]n no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g). This subsection is known as the "three strikes" provision of the PLRA.

Court records indicate that Plaintiff has filed at least two lawsuits in this Court<sup>1</sup>, and one

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<sup>1</sup> See Eaker v. Allred, et al., 5:92cv76 (W.D.N.C.) (Dismissed for failure to state a federal claim on which relief may be granted); Eaker v. Iveson et al., 4:97cv166 (W.D.N.C.) (Dismissed pursuant to 28 U.S.C. § 1915(e)(2)).

in the Eastern District of North Carolina,<sup>2</sup> that were dismissed for failure to state a claim for relief. Further, Plaintiff has not demonstrated that he is under imminent danger of serious physical injury; therefore, his Complaint must be dismissed without prejudice.

**IT IS, THEREFORE, ORDERED** that:

1. Plaintiff's Complaint (Doc. No. 1) is **DISMISSED** pursuant to 29 U.S.C. § 1915(g); and
2. The Clerk is directed to send a copy of this Order to the pro se Plaintiff.

Signed: January 3, 2011

A handwritten signature in cursive script, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.  
Chief United States District Judge



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<sup>2</sup> See Eaker v. N.C. Combine Records, et al., 5:02ct782 (E.D.N.C.) (Concluding Plaintiff had no claim under 42 U.S.C. § 1983 and dismissing the complaint).